

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

DATE:

JAN 26 1989

SUBJECT:

Arkansas Chemical Co. Site, Newark, New Jersey
Proposed MOA for Acceptance of Payment

FROM:

File

TO:

William C. Tucker, Attorney *WCT*
NJSUP Branch

On January 26, 1988, I spoke by telephone to the City of Newark's Corporation Counsel, Glenn Grant (201-733-3880), concerning the proposed MOA, the latest draft of which was sent to him on July 19, 1988. By letter dated September 23, 1988, he stated that the City was "amenable to entering into an agreement with EPA on the terms proposed" in the MOA. Mr. Grant stated that the appraisal promised last summer had not yet been "ordered" pending EPA's execution of the MOA, but would be ordered as soon as the MOA was executed. He further stated that the appraised value would be the City's asking price and that bidding would start at that value.

He is amenable to changes in language which would make clear that EPA by entering into the MOA does not commit itself to granting a covenant not to sue or release to a potential purchaser. He acceded to language changes such as making clear that both the purchase price and the purchaser must be acceptable to EPA, effectively giving EPA veto power over any sale (language which is not now in the agreement, although implied), and adding a disclaimer to the effect that EPA's promise to enter into negotiations in no way obligates or binds EPA to granting a covenant not to sue or release to a potential purchaser.

NOTE TO FILE:

Advantages to EPA of the MOA are as follows:

- (1) The City is not a PRP, having acquired the property "involuntarily" through tax lien foreclosure. Therefore, the City is under no obligation to enter into the agreement. By the same token, EPA has no claim against the City to "compromise" or "settle". Thus, DOJ concurrence is not required for execution by the Region of the MOA.
- (2) The City is not taking its back taxes out of the sale price, but is agreeing to turn over all sale proceeds to EPA.
- (3) Even though not a PRP, the City is not released from liability under the MOA.
- (4) Although the Agreement commits EPA to "enter into negotiations" with potential purchasers for a release, EPA is not bound to give such a release. The City is willing to agree to an express disclaimer to that effect (see above). Even if the language were not there, it would be implied that EPA would do so, since any purchaser would request one, and the liability for past costs would be factored into the negotiated sale price.
- (5) At the time of sale, if a covenant were granted, EPA would be settling, and a 10-point settlement paper would then be sent to DOJ for approval.

